

TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

2007 NOV 19 P 1:34

CC-0ALJ

In the Matter of:

David Titus

EB Docket No. 07-13

ORIGINAL

DATE OF HEARING: November 7, 2007 VOLUME: 3

PLACE OF HEARING: WASHINGTON, D.C. PAGES: 170-182

NEAL R. GROSS & CO., INC.
1323 RHODE ISLAND AVENUE, NW
WASHINGTON, D.C. 20005
TELEPHONE (202) 234-4433

FEDERAL COMMUNICATIONS COMMISSION

+ + + + +

PRE-HEARING CONFERENCE

IN THE MATTER OF: :
: :
: :
DAVID L. TITUS : EB Docket No.
: 07-13
: :
: FRN No.
: 0002074797
Amateur Radio Operator : File No.
: EB-6-IH-5048
Licensee of Amateur Radio :
Station KB71LD :
:

VOLUME 3

Wednesday,
November 7, 2007

The pre-hearing conference came to
order at 9:00 a.m. in Room TW-A363 of 445 12th
Street, SW, Washington, DC.

BEFORE:

RICHARD L. SIPPEL,
Administrative Law Judge

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

APPEARANCES:On Behalf of the Complainant:

GEORGE LYON, ESQ.
of: Lukas, Nace, Gutierrez & Sachs,
Chartered
1650 Tysons Boulevard
Suite 1500
McLean, VA 22102
(703) 584-8664

On Behalf of the Agency:

GARY SCHONMAN, ESQ.
Federal Communications Commission
Special Counsel
Investigations & Hearings Division
445 12th Street, SW
Washington, DC 20554
(202) 418-1795

WILLIAM H. KNOWLES-KELLETT, ESQ.
Federal Communications Commission
Attorney Advisor
Investigations & Hearings Division
1270 Fairfield Road
Gettysburg, PA 17325
(717) 338-2505

1 P-R-O-C-E-E-D-I-N-G-S

2 8:59 a.m.

3 ADMIN. JUDGE SIPPEL: Pre-hearing
4 conference in the matter of David Titus, new
5 counsel having appeared in this case.

6 Let me ask counsel to identify
7 themselves please for the record.

8 MR. LYON: Your Honor, George Lyon
9 with Lukas, Nace, Gutierrez & Sachs for Mr.
10 Titus.

11 ADMIN. JUDGE SIPPEL: Good
12 morning, Mr. Lyon. And you're local. Isn't
13 that correct?

14 MR. LYON: That is correct.

15 ADMIN. JUDGE SIPPEL: And on
16 behalf of the Bureau?

17 MR. SCHONMAN: Good morning, Your
18 Honor. Gary Schonman and William Knowles-
19 Kellett on behalf of the Chief Enforcement
20 Bureau.

21 ADMIN. JUDGE SIPPEL: Thank you.
22 The first order on my agenda is the reciprocal

1 disclosure order. Has that been resolved?

2 MR. LYON: I think we've come to
3 an agreement that the Bureau has disclosed
4 what they needed to disclose, and we've
5 disclosed what we need to disclose.

6 MR. SCHONMAN: Yes.

7 MR. LYON: So no ruling is
8 necessary, Your Honor.

9 ADMIN. JUDGE SIPPEL: Okay. I can
10 treat that as moot and indicate accordingly.

11 Okay. Yesterday, I issued a
12 motion for fabrication. Everybody can see
13 that.

14 MR. SCHONMAN: Yes, sir.

15 ADMIN. JUDGE SIPPEL: And we don't
16 have to spend any more time with that. Okay.
17 Now the only other thing I have today are
18 dates. And I have them ready to go.

19 Is there anything else that
20 anybody wanted to discuss this morning?

21 MR. SCHONMAN: No, sir. I think -

22 -

1 MR. LYON: No, Your Honor.

2 MR. SCHONMAN: -- the dates are
3 the only -- the last remaining item.

4 ADMIN. JUDGE SIPPEL: Okay. All
5 right. That just makes me feel sort of
6 comfortable. Everything seems to be all
7 wrapped up as far as discovery goes -- not
8 wrapped up but in the sense that you know
9 where you're going and how you're going to get
10 there, and all you need to know is a train
11 schedule. Let's see what I can do.

12 The first day would be four -- no,
13 that can't be right. The first day would be
14 the fifth -- well, I'm going to go backwards.
15 No, let me -- I'm sorry. I've got a numbering
16 system here, but it doesn't jive with dates.

17 The first item would be 14
18 December would be the date for the submission
19 of the expert's statement, which would include
20 a summary of facts and his opinion. You can
21 use as a guide Rule 26(b) of the Federal
22 Rules. That should be all that's necessary.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Well, that will be all that's necessary. If
2 it's a full disclosure in accordance with that
3 rule, the bureau should be in fine shape to go
4 forward.

5 January and February, I'm not
6 going to set any dates, except for a schedule
7 to be filed by January 8th. That's for
8 depositions. That's the time for depositions.
9 Not the whole month of February, because we
10 have a cut-off date, but January and February
11 will be the deposition period.

12 January 8th, I want the parties to
13 give me a schedule -- just a schedule of the
14 depositions -- who's going to be deposed and
15 when, and I guess a brief statement as to what
16 the party is going to be deposed on. The
17 subject matter -- very brief. Just a cursory
18 description.

19 Okay. The third date would be 22
20 February. And that's on a Friday. And that
21 would be the conclusion of all discovery. And
22 by that I mean, there'd be nothing more

1 initiated. If there's a few clean-up items
2 that the documents are coming but they haven't
3 arrived yet, or that kind of thing, I'm not
4 going to press you on. But don't initiate any
5 more discovery without my authorization after
6 22 February.

7 3 March, which is a Monday, would
8 be the exchanges of the case-in-chief, and a
9 short trial brief. I will set forth in the
10 order what's to go in the trial brief.

11 Basically it's like a bench memo
12 just simply informing me as to exactly where
13 your case is going and also citing any
14 authorities I should be aware of both on
15 substantive issues and on any procedural or
16 evidentiary issues that you can foresee coming
17 up.

18 The next category would be on the
19 notification for cross examination. On 10
20 March, which is a Monday, each side will
21 exchange the witnesses for cross exam that you
22 intend to call.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 There really should be a filing on
2 that, but the main thing I'm asking you to
3 rely on is e-mail. Be sure that there's
4 timely e-mailing. And all this is by 12:00
5 Noon.

6 In other words, by 12:00 Noon,
7 each side should know who the other side is
8 calling for cross examination -- 10 March,
9 which is a Monday.

10 On 12 March, which is a Wednesday
11 -- again at 12:00 Noon -- any opposition to
12 any witness.

13 And then on 14 March, which is a
14 Friday, reply to any objections by 12:00 Noon.

15 MR. LYON: What was that last
16 date?

17 ADMIN. JUDGE SIPPEL: 14 March,
18 which is a Friday. And that would be to reply
19 to the objection or the opposition.

20 Now what's left out in here is
21 will there be any witnesses that you
22 anticipate would be under subpoena? Is it too

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 early to tell me?

2 MR. LYON: Your Honor, I think
3 it's too early to tell. I can't think of any
4 adverse witnesses that we would intend to call
5 at this time.

6 ADMIN. JUDGE SIPPEL: Okay.

7 MR. LYON: If it comes down to it
8 that I anticipate asking for a subpoena, I
9 certainly will get it to you as soon as
10 possible.

11 ADMIN. JUDGE SIPPEL: All right.
12 Well, I will use that 22 February date as the
13 date, unless a witness walks away from you or
14 something at the last minute. But generally
15 that would be the conclusion of discovery date
16 that will control on that.

17 If you need a subpoena, get it to
18 me before the 22nd on a testifying witness.
19 That will probably come out in the event there
20 was a subpoena needed in connection with a
21 deposition. I suppose that would be the best
22 flag on that.

1 MR. LYON: The only complication I
2 can think of is in the event that the Bureau
3 calls for one of my witnesses for cross
4 examination -- and which I may not have
5 anticipated -- and at the time that I ask a
6 witness, the witness tells me well, my
7 employer is going to require a subpoena.
8 That's the only possible --

9 ADMIN. JUDGE SIPPEL: A pro forma
10 kind of subpoena. All right.

11 Well, I'll just let that one
12 loose, I mean it sounds like you just -- just
13 to keep it in mind that --

14 MR. SCHONMAN: But, Your Honor,
15 under that scenario though, you would not know
16 until you notice for cross examination who you
17 may need a subpoena for. "You" meaning Mr.
18 Lyon.

19 So the February 22nd deadline for
20 requesting subpoenas --

21 ADMIN. JUDGE SIPPEL: No. 22
22 February is conclusion of discovery.

1 MR. SCHONMAN: Right. I thought
2 you indicated -- I guess I'm mistaken.

3 ADMIN. JUDGE SIPPEL: Well, I'm
4 saying that would be a -- not a cut-off date,
5 but that would be the target date to have any
6 subpoenas. I will say I can't control this
7 situation.

8 MR. SCHONMAN: But Mr. Lyon
9 wouldn't know who he may need a subpoena for
10 until at the earliest March 10, which is the
11 notification of witnesses for cross
12 examination date.

13 ADMIN. JUDGE SIPPEL: Right. But
14 I'm expecting he could have a pretty good
15 idea.

16 MR. LYON: I'd probably ask you as
17 well. And, again, I don't expect this to be
18 much of a contentious hearing.

19 MR. SCHONMAN: I agree with that.

20 ADMIN. JUDGE SIPPEL: I'm just
21 going to leave that open.

22 MR. SCHONMAN: Okay.

1 ADMIN. JUDGE SIPPEL: So where am
2 I left with? Okay, I've got the three dates
3 on the witness notification, the last date
4 being 15 April. I apologize for that, it
5 being tax day. But I don't know how to
6 cushion that.

7 If I put it before the 15th of
8 April, that's the rush to get the tax returns
9 completed. And if it's after 15 April, it's
10 going to shorten the week. So I'm open. Is
11 that going to be a problem for anybody?

12 MR. LYON: It will not be a
13 problem for me, Your Honor.

14 MR. SCHONMAN: Neither for the
15 Bureau.

16 ADMIN. JUDGE SIPPEL: Neither of
17 the Bureau Counsel? Okay. I'll set it for
18 the 15th of April. I may be the one that has
19 the problem, but that's my problem.

20 Okay. That's all that I have.
21 For my purposes, it was worth having the
22 formal conference on this so I could meet

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 counsel for Mr. Titus -- Mr. Lyon.

2 And I just never know what to
3 anticipate when we start coming to settling --
4 setting dates, and if there's any -- got to be
5 any back and forth, this is the place to do
6 it.

7 So anyway, if there's nothing
8 else, I'm going to conclude this conference.
9 And we'll just go our ways. All right? Very
10 well.

11 The conference is concluded. And
12 this case is set for hearing on 15 April. And
13 we're in adjournment until that date.

14 Thank you very much.

15 MR. LYON: Thank you, Your Honor.

16 MR. SCHONMAN: Thank you.

17 (Whereupon, at 9:09 a.m., the
18 hearing was adjourned.)
19
20
21
22

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

David L. Titus, Amateur Radio Operator

Name of Hearing

EB DOCKET NO. 07-13

Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

NOVEMBER 7, 2007

Date of Hearing

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 9, inclusive, are the true, accurate and complete transcript prepared from the reporting by Christina Warner (Reporter's Name) in attendance at the above identified hearing, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription statement of Work and have verified the accuracy of the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the hearings and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the hearing or conference.

November 7, 2007

Christina Warner

Date

Legible Name and Signature of Reporter

Name of Company: Neal Gross Co.

November 7, 2007

Judy Hadley

Date

Legible Name and Signature of Transcriber

Name of Company: Neal Gross Co.

November 7, 2007

Tracy Cain

Date

Legible Name and Signature of Proofreader

Name of Company: Neal Gross Co.